2013 IL App (4th) 130241-U

NO. 4-13-0241

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 20, 2013
Carla Bender
4th District Appellate
Court, IL

LINDA GOETZ,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
THE CITY OF SPRINGFIELD, ILLINOIS, a Municipal Corporation,	)	No. 11MR345
Defendant-Appellee.	)	Honorable
	)	John Schmidt,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting summary judgment where the unambiguous settlement agreement terms did not provide the plaintiff a credit of vacation and sick days that would have accrued while plaintiff was terminated from her employment.

¶ 2 On July 14, 2011, plaintiff, Linda Goetz, filed a breach of contract complaint seeking declaratory and *mandamus* relief against defendant, the City of Springfield, Illinois, a municipal corporation. On December 5, 2012, the trial court granted defendant's motion for summary judgment and denied plaintiff's cross-motion for summary judgment.

¶ 3 On appeal, plaintiff argues the trial court erred in granting summary judgment in favor of defendant. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Defendant provides public utilities services to various customers through the

Department of Public Utilities. Plaintiff began work for defendant in April 1998 as an electric power marketer, a position later changed to "project manager." Defendant terminated plaintiff's employment in March 2006. Following her termination, plaintiff filed a complaint in the United States District Court for the Central District of Illinois, seeking relief against defendant for due-process and equal-protection rights violations. On December 1, 2010, plaintiff and defendant entered into a settlement agreement resolving all disputes. Plaintiff agreed to dismiss with prejudice all claims against defendant in exchange for monetary compensation and her reinstatement on or before December 13, 2010, as a project manager. Specific to plaintiff's reinstatement, paragraph II.C.(3) of the settlement agreement states:

> "Goetz shall be restored all of the accumulated sick days which she had at the time of her separation from employment with the City in March of 2006. For purposes of determining Goetz's benefits and the conditions of her employment, her seniority date with the City shall be April, 1998. For purposes of considering her entitlement to sick days, vacation days and other City benefits, Goetz shall be considered to have worked for the City continuously at all times between March of 2006 and December 13, 2010. "

¶ 6 Defendant reinstated plaintiff on December 13, 2010. The parties provided to the district court on January 18, 2011, a stipulation and order for dismissal. Although an order entered by the district court dismissing with prejudice all claims against defendant was not made a part of the instant record, the parties stipulated on May 4, 2012, that "[i]n exchange for certain considerations made by the City, Goetz: a) dismissed the Federal Proceeding with prejudice; and

b) gave a general release to the Defendants of the claims she had against each arising out of her termination from employment with the City."

¶ 7 On July 14, 2011, plaintiff filed a breach of contract complaint in the circuit court of Sangamon County seeking declaratory and *mandamus* relief against defendant (and others not parties to this appeal). Plaintiff attached the settlement agreement entered into by plaintiff and defendant on December 1, 2010. Citing paragraph II.C.(3) of the settlement agreement, plaintiff alleged defendant breached the settlement agreement where defendant "refused to credit Goetz and restore to her vacation and sick leave account[s], those sick and vacation days she would have earned had she been employed by the City between March of 2006 and December of 2010. According to plaintiff, defendant "is only allowing her to begin accruing sick and vacation days upon the effective date of her re-employment with the City." Plaintiff sought an order stating she was "entitled to have credited to her sick and vacation day account all sick and vacation days she would have earned through her employment with [defendant] had she not been terminated from employment with it" and, further, an order directing defendant to credit her vacation and sick day accounts accordingly. On November 28, 2011, defendant filed an answer denying it had breached the settlement agreement.

¶ 8 On May 4, 2012, the parties filed a stipulation stating there were no material facts in dispute but only an issue of interpretation of a single paragraph in the settlement agreement entered into on December 1, 2010. According to the parties' stipulation, "[t]he nature of the dispute in this case involves the entitlement, if any, of Goetz upon her reinstatement to employment with the City to be credited with sick days and vacations days which she would have earned between March of 2006 and December of 2010 had her employment not been terminated

by [defendant]." The parties stated their intent to file cross-motions for summary judgment.

¶ 9 On May 29, 2012, defendant filed a motion for summary judgment. Defendant argued the settlement agreement did not contain specific language entitling plaintiff to accumulate vacation and sick days while terminated from her employment with defendant. Also, defendant argued that plaintiff's interpretation of the settlement agreement was contrary to defendant's use-it-or-lose-it policy for accrued vacation days. Further, defendant argued that the stipulation and order for dismissal provided by the parties to the district court on January 18, 2011, was an admission by plaintiff that defendant complied with the terms of the settlement agreement. Specifically, paragraph II.H. of the settlement agreement provided for voluntary dismissal with prejudice of the district court proceeding only "[u]pon the payment to Goetz and Baker, Baker & Krajewski, LLC of the cash compensation more specifically referred to in paragraph II.B. of this instrument *and* the reinstatement of Goetz to employment with the City *as provided in paragraph II.C. of this instrument*." (Emphasis added.)

¶ 10 In support of its motion for summary judgment, defendant attached the affidavit of James Kuizin, a human services manager for defendant. Kuizin stated that upon plaintiff's termination of employment, effective April 9, 2006, defendant compensated plaintiff for 57 hours of accumulated vacation leave in the amount of $2,199.68. Further, Kuizin stated that on April 9, 2006, claimant had accumulated 290 hours of sick leave and those hours were reinstated to her sick leave account on December 13, 2010.

¶ 11 On May 30, 2012, plaintiff filed her motion for summary judgment stating that after defendant reinstated her as a project manager on December 13, 2010, the parties disputed whether the settlement agreement provided for plaintiff to accumulate vacation and sick days

while terminated from her employment with defendant. Plaintiff argued the settlement agreement "would seem to be quite clear that [plaintiff] is entitled to these benefits."

¶ 12 Following a hearing on the motions, the circuit court denied plaintiff's motion and entered summary judgment in favor of defendant. The court also denied plaintiff's postjudgment motion for clarification. This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Plaintiff argues the trial court erred in granting summary judgment in favor of defendant. We disagree.

¶ 15 "Summary judgment is appropriate where 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196, 201, 902 N.E.2d 645, 648 (2008) (quoting 735 ILCS 5/2-1005(c) (West 2000)). Where, as here, cross-motions for summary judgment were filed, the parties "agree only a question of law is involved, and the court should decide the issue based on the record." *Farmers Automobile Insurance Ass'n v. Danner*, 2012 IL App (4th) 110461, ¶ 30, 967 N.E.2d 836. On appeal from a trial court's decision granting a motion for summary judgment, our review is *de novo*. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163, 862 N.E.2d 985, 991 (2007).

¶ 16 Plaintiff contends the trial court erred as a matter of law in construing the terms of the settlement agreement. A settlement agreement is a contract, and construction and enforcement of settlement agreements are governed by principles of contract law. *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849, ¶ 18, 963

N.E.2d 968. The primary objective in construing a contract is to give effect to the intent of the parties. *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556, 866 N.E.2d 149, 153 (2007). "A court must initially look to the language of a contract alone, as the language, given its plain and ordinary meaning, is the best indication of the parties' intent." *Gallagher v. Lenart*, 226 Ill. 2d 208, 233, 874 N.E.2d 43, 58 (2007). Moreover, because words derive their meaning from the context in which they are used, a contract must be construed as a whole, viewing each part in light of the others. *Gallagher*, 226 Ill. 2d at 233, 874 N.E.2d at 58. The intent of the parties is not to be gathered from detached portions of a contract or from any clause or provision standing by itself. *Gallagher*, 226 Ill. 2d at 233, 874 N.E.2d at 58. If the language of the contract is susceptible to more than one meaning, it is ambiguous. *Farm Credit Bank of St. Louis v. Whitlock*, 144 Ill. 2d 440, 447, 581 N.E.2d 664, 667 (1991). In that case, a court may consider extrinsic evidence to ascertain the parties' intent. *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 288, 565 N.E.2d 990, 994 (1990). However, an ambiguity is not created merely because the parties disagree. *Thompson v. Gordon*, 241 Ill. 2d 428, 443, 948 N.E.2d 39, 48 (2011).

¶ 17 In this case, plaintiff does not argue the settlement agreement terms are ambiguous, and we agree the settlement agreement terms at issue here are not ambiguous. However, plaintiff contends the language of the settlement agreement entitles her to a credit of vacation and sick days that would have accrued to her vacation and sick leave accounts "between March of 2006 and December 13, 2010," if she had not been terminated by defendant. In support of her argument, plaintiff first contends the intent of the parties, while construing the settlement agreement as a whole, "appears to attempt to replicate where Goetz would have been had her

employment not been terminated." The plain language of the settlement agreement does not support plaintiff's contention. In part, the settlement agreement provides for an award of $20,000, representing only a portion of plaintiff's lost wages. Further, the settlement agreement provides for a contribution by defendant to plaintiff's retirement account equal to 17 months service, not to exceed $5,500. Defendant terminated plaintiff effective April 9, 2006, and reinstated plaintiff more than four years later, on December 13, 2010. The settlement agreement did not attempt to place plaintiff in the same position she would have been had she not been terminated.

¶ 18 As detailed above, the applicable paragraph of the settlement agreement provides as follows:

> "Goetz shall be restored all of the accumulated sick days which she had at the time of her separation from employment with the City in March of 2006. For purposes of determining Goetz's benefits and the conditions of her employment, her seniority date with the City shall be April, 1998. For purposes of considering her entitlement to sick days, vacation days and other City benefits, Goetz shall be considered to have worked for the City continuously at all times between March of 2006 and December 13, 2010."

¶ 19 The plain and ordinary meaning of the above-stated language provides for the restoration of sick days that plaintiff accumulated *before she was terminated* by defendant and also provides plaintiff a seniority date of April 1998. Further, the settlement agreement results in plaintiff being viewed as continuously employed between April 1998 and December 13, 2010,

even though she did not work for defendant "between March of 2006 and December 13, 2010," for the purpose of determining the rate at which plaintiff would accrue vacation and sick days, and other benefits, upon her reinstatement as a project manager.

¶ 20 Contrary to plaintiff's argument, our interpretation of the language of the settlement agreement does not make the third sentence in the above-stated paragraph "redundant and unnecessary." The second sentence in the paragraph provides plaintiff with a seniority date of April 1998. An employer may use a seniority date to determine accrual of vacation and sick leave but may also use a seniority date to determine compensation, pension benefits, and job assignments. According to the settlement agreement in this case, defendant may use a seniority date to determine a layoff plan. A seniority date may be used for multiple purposes in determining eligibility for benefits.

¶ 21 We interpret the third sentence as a promise plaintiff would be viewed as continuously employed between April 1998 and December 13, 2010, even though she did not work for defendant "between March 2006 and December 13, 2010," for the purpose of determining the rate at which plaintiff would accrue vacation and sick days, and other benefits, upon her reinstatement. Specific to vacation leave, the applicable municipal code provides for employees to earn vacation leave upon completion of a set number of years of employment. Pursuant to the settlement agreement, plaintiff has a seniority date of April 1998. According to Kuizin, defendant terminated plaintiff from her employment effective April 9, 2006, and defendant reinstated plaintiff on December 13, 2010. Accordingly, plaintiff would have completed approximately eight years of employment and would earn vacation leave at the rate of 15 days per year. With the addition of the continuous employment language in the third sentence

of the paragraph, plaintiff has a seniority date of April 1998, and was provided continuous employment until December 13, 2010. Accordingly, plaintiff would be considered to have completed more than 12 years of employment and therefore, would earn vacation leave at the rate of 16 days per year.

¶ 22 We do not discuss plaintiff's accrual of sick days as plaintiff has not provided this court with any evidence of defendant's sick leave policy. Plaintiff has the burden as the appellant to produce a record demonstrating error. Without such, we must presume the circuit court's order was entered in accordance with the law and applicable procedures. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984) ("[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.").

¶ 23 Accordingly, we find the plain language of the settlement agreement does not provide for a credit of vacation and sick days that would have accrued while plaintiff was terminated from her employment with defendant, between March of 2006 and December 13, 2010. Based on this determination, we need not address plaintiff's arguments that defendant did not provide her a reasonable opportunity to take vacation earned "between March of 2006 and December 13, 2010." Plaintiff was terminated from her employment with defendant and did not earn vacation leave between March of 2006 and December 13, 2010.

¶ 24 Finally, plaintiff argues the circuit court improperly relied on defendant's use-it-or-lose-it policy for accrued vacation days when it granted defendant's motion for summary

judgment and denied plaintiff's cross-motion for summary judgment. As stated above, we review *de novo* a trial court's decision granting a motion for summary judgment (*Bagent,* 224 Ill. 2d at 163, 862 N.E.2d at 991), and we may affirm on any basis warranted by the record (*Ashley v. Pierson*, 339 Ill. App. 3d 733, 737, 791 N.E.2d 666, 669-70 (2003)). We reject plaintiff's argument that the trial court erred by granting summary judgment in defendant's favor.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the Sangamon County circuit court's judgment.

¶ 27 Affirmed.